

where the size of the farming operations is such as to justify it. Only employees engaged in the repair of equipment used in performing agricultural functions would be within section 3(f), however; employees repairing equipment used by the employer in industrial or other nonfarming activities would be outside the scope of agriculture. (*Maneja v. Waialua*, 349 U.S. 254.) The repair of equipment used by other farmers in their farming operations would not qualify as an agricultural practice incident to the farming operations of the farmer employing the repair workers.

(b) The following are other examples of practices which may qualify as “agriculture” under the secondary meaning in section 3(f), when done on a farm, whether done by a farmer or by a contractor for the farmer, so long as they do not relate to farming operations on any other farms: The operation of a cook camp for the sole purpose of feeding persons engaged exclusively in agriculture on that farm; artificial insemination of the farm animals; custom corn shelling and grinding of feed for the farmer; the packing of apples by portable packing machines which are moved from farm to farm packing only apples grown on the particular farm where the packing is being performed; the culling, catching, cooping, and loading of poultry; the threshing of wheat; the shearing of sheep; the gathering and baling of straw.

(c) It must be emphasized with respect to all practices performed on products for which exemption is claimed that they must be performed only on the products produced or raised by the particular farmer or on the particular farm (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286; *Bowie v. Gonzalez*, 117 F. 2d 11; *Mitchell v. Hunt*, 263 F. 2d 913; *NLRB v. Olaa Sugar Co.*, 242 F. 2d 714; *Farmers Reservoir Co. v. McComb*, 337 U.S. 755; *Walling v. Peacock Corp.*, 58 F. Supp. 880; *Lenroot v. Hazelhurst Mercantile Co.*, 153 F. 2d 153; *Jordan v. Stark Bros. Nurseries*, 45 F. Supp. 769).

§ 780.159 Forest products.

Trees grown in forests and the lumber derived therefrom are not agricultural or horticultural commodities, for

the purpose of the FLSA. (See § 780.205 regarding production of Christmas trees.) It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within sec. 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.200 through 780.209 discussing the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute agriculture. For a discussion of the exemption in sec. 13(b)(28) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

[73 FR 77238, Dec. 18, 2008. Redesignated at 74 FR 26014, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26014, May 29, 2009, § 780.115 was redesignated as § 780.159 and newly designated § 780.159 was suspended, effective June 29, 2009.

Subpart C—Agriculture as It Relates to Specific Situations

FORESTRY OR LUMBERING OPERATIONS

§ 780.200 Inclusion of forestry or lumbering operations in agriculture is limited.

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed “by a farmer or on a farm as an incident to or in conjunction with such farming operation.” While “agriculture” is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not considered agricultural employees.

§ 780.201 Meaning of “forestry or lumbering operations.”

The term “forestry or lumbering operations” refers to the cultivation and management of forests, the felling and

trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.205 through 780.209 and in part 788 of this chapter which considers the section 13(a)(13) exemption for forestry or logging operations in which not more than eight employees are employed.) “Wood working” as such is not included in “forestry” or “lumbering” operations. The manufacture of charcoal under modern methods is neither a “forestry” nor “lumbering” operation and cannot be regarded as “agriculture.”

[74 FR 26014, May 29, 2009]

§ 780.202 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed “in conjunction with” as well as “incident to” farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural if the person performing the practice did any farming, no matter how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (*Ridgeway v. Warren*, 60 F. Supp. 363 (M.D. Tenn.); *in re Combs*, 5 WH Cases 595, 10 Labor Cases 62,802 (M.D. Ga.)). To illustrate, where an employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous to such timberland, he would not be engaged in agriculture so far as his forestry or lumbering operations are concerned. In such case, the forestry or lumbering operations would clearly not be subordinate to the farming operations but rather the principal or a separate business of the “farmer.”

§ 780.203 Performance of operations on a farm but not by the farmer.

Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs

or the resulting lumber by a contract logger or sawmill owner are not within the scope of agriculture unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to “such farming operations.”

§ 780.204 Number of employees engaged in operations not material.

The fact that the employer employs fewer than a certain number of employees in forestry and lumbering operations does not provide a basis for their being considered as agricultural employees. This is to be distinguished from the exemption provided by section 13(a)(13) (discussed in part 788 of this chapter) which is limited to employers employing not more than eight employees in the forestry or logging operations described therein.

NURSERY AND LANDSCAPING OPERATIONS

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in “agriculture”:

- (a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;
- (b) Handling such plants from propagating frames to the field;
- (c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

[74 FR 26015, May 29, 2009]

§ 780.206 Planting and lawn mowing.

- (a) The planting of trees and bushes is within the scope of agriculture where it constitutes a step in the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, or where it constitutes a practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations (as where it is part of the subordinate marketing